

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2009 Iowa Acts, Senate File 484, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 66, "Quality-Based Inspection," and adopt new Chapter 66, "Boarding Homes," Iowa Administrative Code.

The current Chapter 66 is being rescinded as this chapter has never been implemented and no facilities participate in the program. New Chapter 66 is proposed pursuant to 2009 Iowa Acts, Senate File 484, which created new responsibilities related to boarding homes. This Notice of Intended Action has been presented to other agencies in the multidisciplinary team and the Governor's Dependent Adult Protective Advisory Council. Several suggestions were incorporated into the Notice.

Any interested person may make written suggestions or comments on these proposed rules on or before September 15, 2009. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

Also, a public hearing regarding these proposed rules will be held on September 18, 2009, at 3 p.m., at which time persons may present their views either orally or in writing. The hearing will be conducted over the Iowa Communications Network (ICN) at the following locations:

ICN Room
Sixth Floor
Lucas State Office Building
321 E. 12th St.
Des Moines

Room 118
Iowa Lakes Community College
1900 N. Grand Ave.
Spencer

Room 024
Looft Hall
Iowa Western Community College
2700 College Rd.
Council Bluffs

Room 106
Activity Center
North Iowa Area Community College
500 College Dr.
Mason City

Room 110
Tama Hall
Hawkeye Community College
1501 E. Orange Rd.
Waterloo

Room 528
Trustee Hall
Southeastern Community College
1500 West Agency
West Burlington

Room #2
Keystone Area Education Agency
2310 Chaney Rd.
Dubuque

Sioux City Public Library
529 Pierce St.
Sioux City

Meeting Room D
Iowa City Public Library
123 South Linn St.
Iowa City

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

Any person who intends to attend the public hearing and who has special requirements, such as those relating to hearing or mobility impairments, should contact the Department to advise of specific needs.

These rules are intended to implement 2009 Iowa Acts, Senate File 484.

The following amendment is proposed.

Rescind 481—Chapter 66 and adopt the following **new** chapter in lieu thereof:

CHAPTER 66 BOARDING HOMES

481—66.1(83GA,SF484) Definitions.

“Activities of daily living” means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

“Affiliated person or entity” means an individual operating as a sole proprietorship who is related within the third degree of consanguinity to the boarding home owner or lessee; or a business entity with common ownership or with 25 percent or more ownership by the boarding home owner or lessee.

“Assistance” means aid or help.

“Boarding home” means a premises used by its owner or lessee for the purpose of letting rooms for rental to three or more persons not related within the third degree of consanguinity to the owner or lessee where supervision or assistance with activities of daily living is provided to such persons. A boarding home does not include a facility, home, or program otherwise subject to licensure or regulation by the department of human services, the department of inspections and appeals, or the department of public health.

“Commencing operations” means the date on which a premises becomes a boarding home by renting to a third individual that meets the requirements pursuant to the definition of “boarding home.”

“Department” means the department of inspections and appeals.

“Director” means the director of the department of inspections and appeals.

“Known” means information that an owner, a lessee, or a manager has without seeking additional information from tenants.

“Lessee” means a person who leases the boarding home from its owner.

“Multidisciplinary team” means a team consisting of members of various departments as is appropriate for an investigation. The team may include employees of the department of inspections and appeals, the department of human services, the state fire marshal and the division of criminal investigation of the department of public safety, the department of justice, or other local, state, and federal agencies.

“Premises” means room and the structure of which it is a part and facilities and appurtenances to it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

“Preponderance of the evidence” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. A “preponderance of the evidence” standard does not require that the investigator personally witnessed the alleged violation.

“Probable cause” means a reasonable suspicion to believe that a boarding home is in violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], licensing or other regulatory

requirements of the department of human services, department of inspections and appeals, or department of public health; or that dependent adult abuse of any individual living in the boarding home has occurred or is occurring.

“Responsible party” means the individual designated on the registration of a boarding home as the department’s primary contact.

“Room” means an apartment, group of rooms, or single room that is occupied as a separate living quarter or, if vacant, that is intended for occupancy as a separate living quarter, in which a tenant can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“Supervision” means oversight necessary to prevent accidents or ensure the health, safety, and welfare of the tenant.

“Third degree of consanguinity” means the following relatives of the owner or lessee: spouse, children, parents, siblings or half-siblings, grandchildren, grandparents, uncles, aunts, nephews, nieces, great-grandparents, and great-grandchildren.

481—66.2(83GA,SF484) Registration of boarding homes.

66.2(1) A boarding home shall file a statement of registration with the department.

a. Boarding homes in operation on January 1, 2010, or after shall register with the department within 60 days of commencing operations.

b. Boarding homes in operation prior to January 1, 2010, shall register with the department no later than March 1, 2010.

66.2(2) The statement of registration may be submitted electronically via an Internet-based system, by mail to Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by fax to (515)242-5022.

66.2(3) The registrant shall include, at a minimum, the following information on the statement of registration:

- a. Name(s) of the owner, lessee, and manager, as applicable;
- b. Number of rooms available for rent and maximum number of tenants for the entire boarding home;
- c. Location of the boarding home, including street address, city, and ZIP code;
- d. Contact information for the owner, lessee, and manager, including telephone number, mailing address and E-mail address;
- e. Occupant loads as calculated in accordance with the building and fire codes as adopted by the applicable jurisdictions;
- f. Whether the building is equipped with a fire sprinkler system; and
- g. Name of the responsible party. The department will send all notices regarding the boarding home to the responsible party.

66.2(4) Failure to file a statement of registration in a timely manner may result in a penalty of no more than \$500.

66.2(5) The boarding home shall notify the department of any changes to the information on the initial statement of registration within 30 days of when the change occurs, including cessation of operation. Changes shall be submitted in the manner described in subrule 66.2(2).

481—66.3(83GA,SF484) Occupancy reports.

66.3(1) Each boarding home shall file an occupancy report annually with the department.

a. For new boarding home registrations, an occupancy report shall be filed along with the initial statement of registration. The occupancy report that accompanies the initial statement of registration shall provide information as of the last day of the preceding month.

b. After the initial registration, registrants shall submit a completed occupancy report by January 31 of each year with information current as of December 31 of the preceding year.

66.3(2) The occupancy report may be submitted electronically via an Internet-based system, by mail to Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by fax to (515)242-5022.

66.3(3) The owner or lessee shall include, at a minimum, the following information on the occupancy report. If the owner or lessee is unable to answer the question because the owner or lessee does not have such information, the owner or lessee shall indicate such on the report.

- a.* Current number of rooms occupied;
- b.* Current number of tenants residing in the boarding home;
- c.* If applicable, date of last fire inspection and any deficiencies noted and how such deficiencies have been corrected;
- d.* If known, the number of tenants receiving Medicaid;
- e.* If known, the number of tenants receiving food assistance benefits (EBT cards);
- f.* If known, the number of tenants receiving other types of state assistance and the types of state assistance;
- g.* Types of services provided or arranged by the owner, lessee, manager or an affiliated person or entity; frequency of services by type; and the name and contact information of the person or entity providing or arranging such services;
- h.* Any assistance or supervision provided to tenants by the owner, lessee or manager;
- i.* Method of rent payments, such as cash, check, or state assistance; and
- j.* If known, the number of tenants with a power of attorney, guardian or conservator.

481—66.4(83GA,SF484) Complaints.

66.4(1) *Complaints.*

- a.* The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a boarding home may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

(2) When the nature of the complaint is outside of the department's authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to boarding homes, the agencies shall forward the complaint to the department.

b. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the boarding home or is without a reasonable basis. If the department, upon preliminary review, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

66.4(2) *Content of complaint reports.* The complaint shall include as much of the following information as possible: the complainant's name, address and telephone number; the complainant's relationship to the boarding home and tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department.

66.4(3) *Time frames for investigation of complaints.* Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint to determine if probable cause exists to investigate the complaint. If probable cause exists, an investigation of the boarding home shall be initiated, as provided in rule 481—66.5(83GA,SF484), within 45 working days. If there is the likelihood of immediate danger, the department shall initiate an investigation of the boarding home within 2 working days of receipt. If there is an allegation of harm, the department shall initiate an investigation of the boarding home within 20 working days of receipt of the complaint.

66.4(4) *Submission of all complaints to core multidisciplinary team.* A copy of all complaints and the department's initial determination whether to investigate the complaint shall be sent to the core multidisciplinary agencies: the department of human services, the state fire marshal of the department of public safety, and the department of justice. If the department has determined not to initiate an

investigation, the members of the core multidisciplinary team may recommend the initiation of, and the department shall initiate, an investigation.

66.4(5) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

66.4(6) *Notification of the boarding home or alleged boarding home of results of investigation.* The department shall notify the boarding home or alleged boarding home, in writing, of the final report of the complaint investigation.

66.4(7) *Notification of the complainant of results of investigation.* The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be notified if the department determines not to investigate a complaint and shall receive an explanation of the department's decision.

481—66.5(83GA,SF484) Investigations.

66.5(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe a boarding home is an unregistered boarding home or a registered boarding home is not in compliance with state, federal or local statutes or rules, an investigation shall be initiated.

66.5(2) *Evaluation of allegations and initial multidisciplinary team.* If an investigation is initiated, the department shall evaluate the allegations to determine which local, state, and federal agencies to include in the initial multidisciplinary team. The department shall notify the agencies of the investigation and the allegations associated with the investigation. The department shall be the lead agency for the investigation unless the multidisciplinary team determines otherwise.

66.5(3) *Addition of other agencies.* The lead agency for the investigation may add other local, state, and federal agencies to the multidisciplinary team as is determined necessary. As a component of the coordinated interagency approach, all members of the multidisciplinary team shall share investigative findings.

66.5(4) *Final findings.* Each agency shall prepare final findings regarding the agency's investigation and submit these findings to the lead agency. The lead agency shall then prepare a consolidated final findings report, which shall be maintained by the department pursuant to the state's document retention policy.

66.5(5) *Post-investigation actions.* The agencies on the multidisciplinary team shall meet to determine the action to be taken as a result of the investigation. Each agency on the multidisciplinary team shall maintain the agency's individual report pursuant to the state's document retention policy. Investigative findings that are confidential under other state, federal, or local requirements shall not be included in the final report.

66.5(6) *Notification of law enforcement.* If the multidisciplinary team believes a criminal violation has occurred or is occurring, the lead agency shall notify the appropriate law enforcement entities.

481—66.6(83GA,SF484) Penalties. The director shall consider the following when determining whether to assess a penalty for violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], or rules adopted pursuant to 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], and determining the amount of the penalty:

1. The duration of the noncompliance;
2. The nature of the noncompliance;
3. The response of the owner or lessee upon notification of noncompliance;
4. The number of tenants impacted; and
5. The impact to the tenants.

481—66.7(83GA,SF484) Public and confidential information.

66.7(1) *Public disclosure.* The following records are open and available for inspection:

- a. Registration forms and accompanying materials;

b. Final findings of investigations, unless otherwise confidential by law, such as investigative findings of the division of criminal investigation of the department of public safety or dependent adult abuse investigations;

c. Official notices of penalties.

66.7(2) Confidential information. Confidential information includes the following:

a. Information that does not comprise a final finding resulting from a complaint investigation or other investigation of the multidisciplinary team and its individual members;

b. Names of all complainants;

c. Names of tenants of a boarding home, identifying personal or medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or lessee; and

d. Social security or employer identification numbers (EIN).

66.7(3) Redaction of confidential information. If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

These rules are intended to implement 2009 Iowa Acts, Senate File 484.